

### **REMARKS**

The subject RCE and this Preliminary Amendment addresses the issues set forth in the Examiner's Advisory Action dated October 27, 2003 as well as adding new claims to more clearly claim that which Applicants consider the invention. Specifically, the Examiner sustained his rejection of claims 1-22 based on the alleged disclosure and teachings of U.S. Patent No. 4,807,224, issued to Naron et al. (hereinafter Naron). In the Examiner's Advisory Action, he indicates that the Applicants have argued that there is not specific discussion in Naron of how data packets are sent through Naron's system. The Examiner counters by indicating that Naron discloses a plurality of possible transmission mediums at column 12, lines 18-46 of Naron.

In response, Applicants have reviewed this specific portion of the reference and offers that such disclosure does still not teach, disclose or suggest each of the claimed aspects of the invention. The cited portion of Naron is a general overview of how data is collected by data collection means 98 and 99, assembled into respective data packets and assigned a sequence number. However, there are absolutely no details provided to the extent of the subject matter cited in the claims. As identified earlier in the prosecution history, Applicants respectfully submit that each and everyone of the specific elements of claim 1 have not been disclosed in Naron nor is a method disclosed in Naron that notifies the commit servers of the assignment of a first sequence number of a first data message or commit servers sending an acknowledgment to the sequencer regarding notification of assignment of the first sequence number to the first data message nor a step of committing the first sequence number to the first data message in response to the sequencer receiving acknowledgments of notification of the assignment of the first sequence number.

Additionally, it should be noted that this is the Examiner's third attempt to provide anticipatory evidence in Naron by providing a new cited portion of the reference. That is, column 12, lines 18-46 have not previously been offered by the Examiner. Moreover, each and every one of the Examiner's previously cited portions of Naron throughout the prosecution history have been specifically addressed and shown to not have each of the

specific and individual elements of the independent claims. The Examiner's latest attempt of offering column 12, lines 18-46 of Naron still does not provide suitable support or evidence to sustain the rejection. Therefore, it is respectfully submitted that claims 1-22 as they presently stand are allowable in view of Naron or any other cited art to date.

The Examiner continues his comments by indicating that Naron is directed to multicasting data messages which is in the Applicants' disclosed field of endeavor and cites In Re Oetiker to support his position. In response, it is respectfully submitted that the Applicants are not disputing the applicability of Naron based on its relevance to the area of technology but rather to the specific aspects of what Naron actually teaches. As per page 4 of Applicants' October 13, 2003 Final Office Action Response, it was indicated that the details of Naron seem to be more pointed towards guaranteeing of recovering data that does not arrive at a receiver rather than the specific steps of establishing the actual multicasting process. It is respectfully submitted that since the Examiner has attempted to provide new portions of Naron each time the Applicants have addressed the Examiner's previous offerings of the teachings of Narone, and shown such previous teachings to not to be anticipatory to the subject invention, Applicants have absolutely made clear the patentable and novel features of the invention as presently claimed. That is, the Examiner has consistently failed to find teachings in Naron. Therefore, it is respectfully submitted that the claims are patentable under 35 U.S.C. §102 and no further rejections based on Naron would appear sufficient.

The Examiner continues by indicating that claims 9 and 10 claim the same invention despite Applicants' arguments to the contrary. The Examiner offers that if all members of the multicast group do not receive the first data message (which is what is claimed in claim 9) than claim 9 is commensurate in scope with claim 10. In response, Applicants respectfully disagree as detailed on pages 8 and 9 of Applicants' Response to the Final Office Action dated October 13, 2003, it was respectfully offered that claim 9 recites the limitation of

"if said each member of the multicast group does not know a first message ID, said first message ID being associated with a first data

message, a first sequence number within one of said gaps having been previously committed to said first data message, said each member of the multicast group querying one of said commit servers to obtain said first message ID;"

Since this aspect is not listed in claim 10, claim 10 cannot be commensurate in scope with claim 9 because claim 10 will not have a step of querying one of said commit servers (i.e., it only recites querying data servers). As such, Applicants respectfully request withdrawal of any rejection thereto.

The Examiner continues to offer that claim 15 and 16 contain the same limitations. The Examiner rationale for this rejection per the Examiner's Advisory Action is "if the recited steps for the synchronization step claimed in claim 16 are removed, what is left is the language of claim 15." In response, it is respectfully submitted that it is not incumbent upon the Examiner to place conditional aspects upon the claims to attempt to show that they are claiming the same invention. That is, what is the Examiner's basis for removing the individual synchronization steps of claim 16? If, for some reason, the claims were to be amended during the prosecution history where steps were added to claim 15 or removed from claim 16, there could possibly be a situation of same invention claiming. However, this is clearly not the case at this point based on originally filed claims 15 and 16. Therefore, any rejection to these claims is respectfully considered insubstantial.

With regards to claims 21 and 22, the Examiner has instructed Applicants to see MPEP §608.01(n) and 37 CFR §1.75 regarding multiple dependent claims. In response, Applicants respectfully submit that the first sentence of §608.01(n) says "generally, a multiple dependent claim is a dependent claim which refers back in the alternative to more than one preceding independent or dependent claim. It is respectfully submitted that each of claims 21 and 22 are drafted in a manner so as to not refer back to more than one preceding claim. Specifically, claim 21 refers back to only claim 16, of which claim 16 refers back only to claim 14, of which claim 14 refers only back to claim 13, of which claim 13 refers back only to claim 8, of which claim 8

refers back only to claim 7 and claim 7 is an independent claim. Similarly, Claim 22 refers back only to claim 8, of which claim 8 refers back only to claim 7, of which claim 7 is an independent claim. Therefore, there are no multiple dependent claims anywhere in the chain of claims 21 or 22.

Applicants further enclose new claims 23-28 for inspection; no new matter has been added.

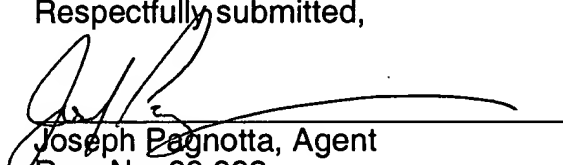
If at any point prior to preparation of the first Office Action in the subject RCE, Examiner believes a telephone call would assist in resolving one or more of the issues brought forth during the prosecution history, Applicants are open to discussion of these issues and requests Agent Joseph Pagnotta be contacted at (732) 530-9404, Ext. 1121.

**Conclusion**

The Applicants submit that all of the claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

November 12, 2003

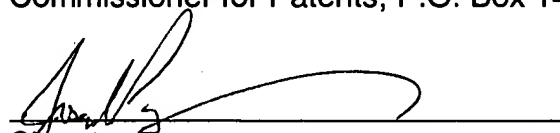
Respectfully submitted,

  
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